



## ***CLOSED CASE SUMMARY***

ISSUED DATE: DECEMBER 16, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0212

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.125-POL 2 – Employee Personal Use of Social Media 1. Employees Shall Not Post Speech That Negatively Impacts the Department's Ability to Serve the Public	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to Be Professional	Not Sustained (Training Referral)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant alleged that the Named Employee made unprofessional and potentially biased postings on social media.

### **SUMMARY OF INVESTIGATION**

The Complainant sent a complaint to OPA in which she alleged that Named Employee #1 (NE#1) made inappropriate comments on social media. Specifically, she provided OPA with a screenshot of a posting that had a meme of a picture of Leonardo Di Caprio from "The Great Gatsby" with a champagne glass outstretched. The text of the meme said: "HERE'S TO U GENIUSES WHO CAN'T CALL IT THE CHINESE VIRUS BUT STILL REFER TO CHINESE FOOD AS CHINESE FOOD." Under the meme, NE#1 wrote: "I'm gonna let ya'll ponder this one for a bit...Can we please stop getting mad about EVERYTHING. It's exhausting."

OPA interviewed the Complainant. She said that she was a "friend" of NE#1 on Facebook and Instagram. This was where she saw the meme. With regard to NE#1's social media posts, she said that some were: "racially motivated I guess." She indicated that the meme that premised this case was the most concerning for her. The Complainant stated that NE#1's other problematic postings were removed from his social media and she did not screenshot them. She also noted that, since this complaint was filed, NE#1 had removed her as a "friend" and that she no longer had access to his social media.

After he received notification of this complaint, NE#1 sent OPA an email. In that email, NE#1 provided commendations that he had received, including premised on interactions with minority communities. He also



informed OPA that, prior to receiving notice of the complaint, an Asian American friend messaged him and let him know that the post could be construed as offensive. NE#1 provided a screenshot of that exchange. NE#1 wrote in response to the friend:

Hey brother, I assume that your post was in response to my meme that I posted the other day? I meant no disrespect. I meant it as a comedic relief from all the craziness right now. I realized that it was in poor taste and removed it shortly after. I truly apologize if I offended you. It was never my intent.

The friend responded:

Not at all! I know you better than that bro and knew it wasn't made to be of any type of offense. Especially in the line of work that you do. I've seen that meme many times before and I think it finally just got to me that people didn't see it from our (Asian folks) perspective...I've made my poor choice in memes too and learned from them too... so I've been there done that.

NE#1 also provided OPA with a posting made by the Complainant, which he indicated suggested her anti-police bias. Lastly, NE#1 wrote that he was not the person that the Complainant was "making [him] out to be."

As part of its investigation, OPA interviewed NE#1. He said that he was assigned to the Community Policing Team and his primary responsibilities were to handle crime at a neighborhood level in a manner that is responsive to concerns expressed by communities.

NE#1 said that he had Facebook and Instagram accounts. NE#1 said that the Complainant was a "friend" on social media. He went to high school with her but had not interacted with her for around 20 years. NE#1 confirmed that he posted the meme and comment in question. NE#1 said that, he did not create the meme, but that he shared it. When he did so, he included the comment detailed above. He told OPA that he shared the meme as a form of comic relief. He said that, at the time, COVID-19 had just started to impact the Seattle area and people were very afraid and commenting a lot on social media. He recalled that people were attacking each other on social media with some people referring to it as the "Chinese Flu" and others as COVID-19. He explained that he posted the meme because he was "pointing out the hypocrisy that some people will call Chinese food Chinese, but they won't call it the Chinese virus, even though it came from China." NE#1 noted that his post was not about any specific race, including Chinese people, or meant to be offensive to anyone but was "about a group of people who will call one one and not the other." He said that the post poked fun at those people, who could have belonged to any racial group. He provided the following information to OPA about the overall intent of the posting:

So my -- my comment that I put on there, I -- well, it was supposed to be positive. It was supposed to be kind of uniting. I said, you know, can we please stop getting mad about everything, because everybody was attacking each other. So that was my intentions.

He said that, around an hour after he made the post, the Complainant responded: "how about because one is food and one is a virus?" He realized that she was offended by the post, so he took it down. He did not reply to the Complainant. Around one or two days later, the Asian American friend referenced above contacted him. The friend wrote him about how Asian Americans, and Asians in general, could find what he wrote offensive. He explained that



they were being attacked for simply being Asian due to anger regarding COVID-19. NE#1 wrote the friend back and they had the above message exchange.

NE#1 said that, when he was notified of the complaint by his chain of command, they discussed whether he should keep the Complainant as a “friend” on social media. The joint decision was made that he should not do so and he de-friended her and blocked her from viewing his page.

Lastly, NE#1 denied posting any racist or insensitive content on social media in the past. He stated his belief that his posting here did not violate the Department’s biased policing or social media policies. While recognizing the breadth of the professionalism policy, he did not feel that his post constituted misconduct.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 – Allegation #1**

#### ***5.125-POL 2 – Employee Personal Use of Social Media 1. Employees Shall Not Post Speech That Negatively Impacts the Department’s Ability to Serve the Public***

SPD Policy 5.125-POL-2 governs Department employees’ use of social media. This policy applies whether or not the usage occurs in the officer’s personal or professional capacity. The policy precludes officers from posting “speech that negatively impacts the Department’s ability to serve the public.” The policy further states that:

Employees may express themselves as private citizens on social media sites as long as employees do not make, share, or comment in support of any posting that ridicules, maligns, disparages, expresses bias or disrespect toward any race, religion, sex, gender, sexual orientation, nationality, or any other protected class of individuals.

Lastly, the policy directs officers to “make reasonable efforts to remove content appearing on their social media account that violate this policy upon learning of the offensive content.”

As a threshold matter, and under SPD policy, is it irrelevant whether the posting in question was made by NE#1 in his personal or professional capacity or whether he identified himself as a police officer on social media. Accordingly, the operative questions here are whether the meme posted by NE#1 “negatively impacted” SPD’s “ability to serve the public” and/or whether his statement was disrespectful or biased against any protected class.

NE#1 told OPA that he has several hundred “friends” on social media. It is clear that one of those “friends” – the Complainant – found NE#1’s post offensive enough to warrant an OPA referral. One other – his Asian American friend – saw it as problematic but did not believe that it constituted racism or indicate that NE#1 was biased. That friend appeared to accept NE#1’s statement that the post was meant to highlight the perception of inconsistency among some social media commentators, not to make derogatory comments towards China. Moreover, as indicated in NE#1’s exchange with that friend, he clearly did not understand the impact that his meme had on Asians and Asian Americans, and he was apologetic when realized what his friend and other similarly situated people had experienced in America since COVID-19 struck.

In evaluating NE#1’s post, OPA concludes that, as NE#1 asserted, it was not directed towards Chinese or Asian individuals, but, instead, was geared towards people who took terminology too seriously. However, OPA does not



perceive the post to be “uplifting” as NE#1 posited or, for that matter, amusing. OPA, instead, finds the post to be simplistic and juvenile. No one debates that COVID-19 originated in China; however, calling it the “Chinese Flu” does nothing but raise vitriol towards Chinese people and Asian Americans. Indeed, none of these individuals are responsible for COVID-19 and, as NE#1’s own friend indicated, innocent people have been subjected to racism and worse for no reason. Moreover, the post was divisive, not unifying as NE#1 claimed his purpose to be.

Evaluating these types cases can be often be complex. OPA is required to make a subjective determination on whether speech “negatively impacts” the Department’s ability to serve the public. As such, OPA reverts to past precedent to guide its decisions. In 2018OPA-1064, the involved officer posted about people supporting “illegal immigration” being “fucksticks” and opined that a package bomb should be sent to political figures. In 2019OPA-0264, the involved officer posted profane statements towards politicians. Included in these statements was a comment directed towards a Muslim U.S. Representative that referenced her religion, as well as comments demeaning people possessing liberal ideologies (“you weak wristed lefties”). In both of these cases, OPA found that the officers’ postings violated the Department’s social media and other policies.

In evaluating the present case, OPA does not believe that it rises to the level of the two precedent cases. Here, NE#1 referenced a meme for the purpose of calling out what he believed to be the negative trend of people getting mad about everything posted on social media. He told OPA that, as soon as he learned that people could find it offensive, he took it down. NE#1 did not, himself, write the words in question. In this respect, his case diverges from the precedent cases. Had he done so, OPA would have been more inclined to find that it violated policy. Moreover, while clearly inappropriate, the language of the meme was not as problematic as that written by the officers in the precedent cases. Given these factors and under the specific circumstances of this case, OPA does not feel that the evidence warrants a Sustained finding. Instead OPA issues NE#1 the below Training Referral.

- **Training Referral:** OPA requests that NE#1’s chain of command discuss the impropriety of NE#1’s post and his poor decision-making. NE#1 should be told that the case nearly resulted in a Sustained finding. He should be counseled to use better judgment on social media moving forward and should be warned that future similar conduct will result in a Sustained finding and the imposition of potentially significant discipline.

Recommended Finding: **Not Sustained (Training Referral)**

#### **Named Employee #1 – Allegation #2**

##### ***5.001 - Standards and Duties 10. Employees Shall Strive to Be Professional***

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained (Training Referral)**

#### **Named Employee #1 – Allegation #3**

##### ***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal



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characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

As discussed above, OPA concludes that, while it contained problematic content, NE#1’s post was purposed to call out people who took offense to certain language, it did not expressly malign or discriminate against a protected class. Moreover, while the Complainant suggested that NE#1 had made other potentially “racist” posts, that evidence was not provided to OPA and NE#1 denied doing so. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**